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No. 81-2111

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

COLUMBIA BROADCASTING SYSTEM, INC.,

Petitioner,

—v.—

ROY EXPORT COMPANY ESTABLISHMENT OF VADUZ, LIECHTENSTEIN, BLACK INC. A.G., FILMVERHUURKANTOOR DE DAM B.V. and RBC FILMS,

Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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Counterstatement of Questions Presented*

1. Whether the Court should review a claim of federal preemption as to a state cause of action for unfair competition involving the piracy of a common-law copyright, which was specifically preserved for state-law protection under the now-superseded 1909 Copyright Act?

2. Whether the Court should review a federal preemption question that is unlikely ever to arise again and presents no issue of lasting or general importance, because the 1909 Copyright Act, which governs this case, was repealed more than four years ago and the new Copyright Act no longer provides for state protection of common-law copyrights?

3. Whether the Court should review petitioner's claim that the court below made a factual error and misapplied state law in determining that the unfair competition claim was based on misappropriation of a common-law rather than federal copyright?

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* Respondent RBC Films is a wholly-owned subsidiary of Paramount Pictures Corp., which is a wholly-owned subsidiary of Gulf + Western Industries, Inc. The remaining respondents are closely-held foreign corporations, whose parent companies, subsidiaries and/or affiliates (if any) are also closely-held foreign corporations.

TABLE OF CONTENTS

	PAGE
Counterstatement of Questions Presented	i
Table of Authorities	v
Statute Involved	1
Counterstatement of the Case	2
Preliminary Statement	2
The Facts	2
Reasons for Denying the Writ	5
I. This Case Does Not Raise a Constitutional Issue of Federal Preemption. Rather, CBS Asks This Court to Review Factual and State Law Questions	5
II. The Decision Below Does Not Conflict With Any Decisions of This or Any Other Court	10
III. This Case, Which Involves a Superseded Statute And Novel Facts, Does Not Raise Issues of General Importance or Questions Likely To Recur	13
Conclusion	15

TABLE OF AUTHORITIES

Cases	PAGE
Aronson v. *Quick Point Pencil Co.*, 440 U.S. 257 (1979)	11
Berenyi v. *District Director, Immigration and Naturalization Service*, 385 U.S. 630 (1967)	10
Bromhall v. *Rorvik*, 478 F. Supp. 361 (E.D.Pa. 1979)	13
Cable Vision, Inc. v. *KUTV, Inc.*, 335 F.2d 348 (9th Cir. 1964), *cert. denied*, 379 U.S. 989 (1965)	12
Columbia Broadcasting System, Inc. v. *Documentaries Unlimited, Inc.*, 42 Misc.2d 723, 248 N.Y.S.2d 809 (Sup. Ct., N.Y. Co. 1964)	6
Compco Corp. v. *Day-Brite Lighting, Inc.* 376 U.S. 234 (1964)	6, 11
District of Columbia v. *Sweeney*, 310 U.S. 631 (1940)	14
Durham Industries, Inc. v. *Tomy Corp.*, 630 F.2d 905 (2d Cir. 1980)	12
Flexitized, Inc. v. *National Flexitized Corp.*, 335 F.2d 774 (2d Cir. 1964), *cert. denied*, 380 U.S. 913 (1965)	11, 12
Goldstein v. *California*, 412 U.S. 546 (1973)	11
Graver Tank & Mfg. Co. v. *Linde Air Products Co.*, 336 U.S. 271 (1949)	10
International News Service v. *Associated Press*, 248 U.S. 215 (1918)	11
J. Truett Payne Co. v. *Chrysler Motors Corp.*, 451 U.S. 557 (1981)	10
Kewanee Oil Co. v. *Bicron Corp.*, 416 U.S. 470 (1974)	11, 12
Leonard Storch Enterprises, Inc. v. *Mergenthaler Linotype Co.*, [1979] Copyright L. Rep. (CCH) ¶ 25,092 (E.D.N.Y. 1979)	12

PAGE

Metropolitan Opera Association v. *Wagner-Nichols Recorder Corp.* 199 Misc. 786, 101 N.Y.S.2d 483 (Sup. Ct., N.Y. Co. 1950), *aff'd*, 279 A.D. 632, 107 N.Y.S.2d 795 (1st Dep't 1951) 11

Mitchell v. *Penton/Industrial Publishing Co.*, 486 F. Supp. 22 (N.D.Ohio 1979) 12

Orth-O-Vision, Inc. v. *Home Box Office*, 474 F. Supp. 672 (S.D.N.Y. 1979) 12

Puddu v. *Buonamici Statuary Inc.*, 450 F.2d 401 (2d Cir. 1971) 12

Ragan v. *Merchants Transfer Co.*, 337 U.S. 530 (1949). 10

Riback Enterprises, Inc. v. *Denham*, 452 F.2d 845 (2d Cir. 1971) 12

Rice v. *Sioux City Memorial Park Cemetary, Inc.*, 349 U.S. 70 (1955) 10, 14

Sears Roebuck & Co. v. *Stiffel Co.*, 376 U.S. 225 (1964) 6, 11

Strout Realty, Inc. v. *Country 22 Real Estate Corp.*, 493 F. Supp. 997 (W.D.Mo. 1980) 13

Suid v. *Newsweek Magazine*, 503 F. Supp. 146 (D.D.C. 1980) 12

Synercon Technology, Inc. v. *University Computing Co.*, 474 F. Supp. 37 (N.D.Tex. 1979) 12

Triangle Publications, Inc. v. *Sports Eye, Inc.*, 415 F. Supp. 682 (E.D.Pa. 1976) 12

Truck Equipment Service Co. v. *Fruehauf Corp.*, 536 F.2d 1210 (8th Cir.), *cert. denied*, 429 U.S. 861 (1976) 11

United States v. *Clark*, 445 U.S. 23 (1980) 10

Wood v. *Strickland*, 420 U.S. 308 (1975) 10

Zacchini v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977) 11

PAGE

United States Constitution

Article 6, Clause 2 5

Statutes

The 1909 Copyright Act, Title 17 U.S.C. §§ 1 *et seq.* (superseded).....1, 5, 10, 12, 13, 14

17 U.S.C. § 2 (superseded).....1, 2, 5, 13

The Copyright Revision Act of 1976, Title 17 U.S.C. §§ 101 *et seq.* 1, 2, 13

17 U.S.C. § 301 ..... 2, 13

Cal. Bus. & Prof. Code § 17208 (West Supp. 1982) 14

Ill. Ann. Stat. ch. 83, § 15 (Smith-Hurd Supp. Pamph. 1981-1982) 14

N.Y. C.P.L.R. § 214 (McKinney Supp. 1981-1982) 14

Texts

Brown, *Unification: A Cheerful Requiem for Common Law Copyright*, 24 U.C.L.A. L. Rev. 1070 (1977) ...12, 13

Nimmer on Copyright (1980) 11

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RESPONDENTS' BRIEF IN OPPOSITION

Statute Involved

This case is controlled by Section 2 of the 1909 Copyright Act (17 U.S.C. § 2, now superseded), which provided:

> Nothing in this title shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor.

The 1909 Copyright Act was superseded six days after the events in this case by the Copyright Revision Act of 1976 (17

U.S.C. §§ 101 *et seq.*). The new Act has no counterpart to Section 2 of the 1909 Act. It abolishes the distinction between common-law and federal copyright protection (17 U.S.C. § 301).

COUNTERSTATEMENT OF THE CASE

Preliminary Statement

This case presents no issue worthy of certiorari. The Second Circuit (Newman and Kearse, C.J.J., and Daly, D.J.), like the District Court (Lasker, J.), correctly ruled that this litigation raises no constitutional question of federal preemption, because the state cause of action for unfair competition was based on the piracy of a common-law copyright specifically preserved for state law protection by Section 2 of the 1909 Copyright Act. CBS challenges the factual determination below that the unfair competition verdict was based on misappropriation of a common-law, rather than a federal, copyright. That challenge to a factual determination under a state-law claim hardly merits a grant of certiorari. Moreover, this litigation raises no issue of general or lasting significance that is likely to recur. It involves a unique set of facts and a copyright statute superseded almost 4 1/2 years ago.

The Facts

In 1972, the Academy of Motion Picture Arts and Sciences gave Charlie Chaplin a special award at the Academy Awards ceremonies telecast by NBC. Plaintiffs, who owned rights in various Chaplin feature films, prepared a 13-minute montage or Compilation of the highlights of Chaplin's films that was broadcast in connection with the awards ceremonies. The Compilation, prepared by a leading Hollywood producer and a well-known director with Chaplin's assistance, was widely recognized as a creative work of unique artistic merit (*See* pp. 6-8 *infra*).

After the Academy Awards program, plaintiffs and Chaplin commenced the preparation of a television retrospective about Chaplin, entitled "The Gentleman Tramp." At about the same time, CBS began work on a proposed television program about Chaplin to be aired at the time of his death. CBS requested plaintiffs' permission to use highlights of Chaplin's feature films (Pet. App. 4, 28).[1] Plaintiffs refused because they were preparing their own retrospective program (Pet. App. 4, 28). As a result, CBS prepared a television special about Chaplin that basically omitted excerpts from Chaplin films owned by plaintiffs.

Several years later, when Chaplin died, CBS decided not to use the program that it had originally prepared. Instead, CBS—without plaintiffs' permission and by means of misrepresentation—obtained from NBC an unauthorized copy of a videotape of the Compilation (Pet. App. 5, 38). CBS then featured the Compilation virtually intact in its Chaplin TV special. The Compilation, which comprised almost 40% of CBS' program, was the heart of its broadcast (Pet. App. 5, 29). CBS obtained the videotape of the Compilation by misrepresenting to NBC that it merely intended to use brief and selected excerpts on its nightly news program (Pet. App. 5, 38). CBS' conduct violated its own written guidelines and all industry standards as to proper practices in the television field (Pet. App. 21, 38). As a result of CBS' broadcast, which reached a record audience for its time period, plaintiffs were unable to license "The Gentleman Tramp" to a network in the United States at the peak time of viewer interest in Chaplin shortly after his death (Pet. App. 29, 56).[2]

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1 References to "Pet. App." are to pages of the two opinions below, as reproduced in the Appendix to the Petition for Certiorari. References to "Pet." are to pages of the Petition itself.

2 "The Gentleman Tramp" was licensed to television networks in other major nations throughout the world.

Judge Lasker, in a scholarly opinion denying CBS' post-trial motions (Pet. App. 24-62), succinctly summarized the key events:

> The facts are that CBS repeatedly requested plaintiffs' permission to use excerpts of the copyrighted films during the period from 1973 through 1977. Plaintiffs denied each request, making it perfectly clear that they would not grant permission because plaintiffs were themselves using the films to make their own Chaplin retrospective. Moreover, CBS acquired the Compilation from NBC based on the misrepresentation that it would use excerpts only on the nightly news. And CBS' conduct violated not only its own guidelines but also industry standards of ethical behavior. Finally, the dramatic ratings boost which CBS in fact enjoyed from the Chaplin special leads to an inference that CBS ignored plaintiffs' rights for its own commercial gain and prestige. As the trial court stated, "there was knowing, willful conduct spelled out as clear as I have ever seen it spelled out . . . ." (Pet. App. 38).[3]

Judge Lasker, agreeing with the trial judge (Judge Ward), found that CBS was guilty of "commercial immorality," "bad faith" and "reckless indifference to plaintiffs' rights" (Pet. App. 50, 54). The Second Circuit agreed (Pet. App. 20-21, 23).

Plaintiffs sued CBS for unfair competition in destroying the United States network marketability of "The Gentleman Tramp," for infringement of the common-law copyright in the Compilation, and for infringement of the federal copyrights in the Chaplin features. The jury awarded damages of more than $700,000—which approximated the lower range of a normal network license fee for a television special such as "The Gentleman Tramp." On this petition, CBS challenges only the award for injury to "The Gentleman Tramp" on the unfair competition count ($410,000).[4]

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3 Record citations in the quotation have been omitted.

4 While CBS repeatedly argues (Pet. 3, 7-8, 12-14) that injury to "The Gentleman Tramp" was in fact remedied under the statutory copyright

(continued)

REASONS FOR DENYING THE WRIT

The petition should be denied because (1) there is no issue of constitutional preemption since CBS pirated a common-law copyright; (2) there is no conflict with prior preemption decisions of this or other courts; and (3) the case does not raise questions of general or lasting importance, because it involves *sui generis* facts under a statute superseded almost 4 1/2 years ago.

I

THIS CASE DOES NOT RAISE A CONSTITUTIONAL ISSUE OF FEDERAL PREEMPTION. RATHER, CBS ASKS THIS COURT TO REVIEW FACTUAL AND STATE LAW QUESTIONS

This case does not present an issue of federal preemption under the Supremacy Clause of the Constitution (Art. 6, cl. 2). CBS pirated the Compilation. The Compilation, as found below (Pet. App. 16, 19, 47-48 & n.8) and now conceded by CBS (Pet. 6, n.6), is protected by a common-law copyright under New York State law by virtue of Section 2 of the now-superseded 1909 Copyright Act.[5] Since the 1909 Act preserved state common-law copyrights, it obviously did not at

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(footnote continued)

claim, under the kind of special verdict form requested by CBS and used by Judge Ward, the jury was given no opportunity to award such damages under that count and in fact did not. Rather, the modest amount of $7,280 awarded under that count is seen on the face of the verdict to constitute only the sum of six separate license fee awards for use of clips from six Chaplin films—totally unrelated to injury to "The Gentleman Tramp." That injury was redressed, as the District Court recognized (Pet. App. 60), by the award under the unfair competition claim.

5 The Compilation is an "unpublished" work entitled to common-law protection because a broadcast is not a "publication" that destroys common-law status (Pet. App. 17, 42). CBS now concedes that point (Pet. 6 & n.6).

the same time preempt state unfair competition claims based on the misappropriation of such copyrights.

Indeed, CBS itself established the principle that the *Sears-Compco* federal preemption doctrine[6] does not apply to a state unfair competition claim involving a common-law copyright. *Columbia Broadcasting System, Inc.* v. *Documentaries Unlimited, Inc.*, 42 Misc. 2d 723, 248 N.Y.S.2d 809 (Sup. Ct., N.Y. Co. 1964). There, CBS won an unfair competition action against a record company that had used a small portion of a CBS newscast, which was protected by New York common-law copyright despite its broadcast. The court agreed with CBS' position that the *Sears-Compco* preemption doctrine was irrelevant to an unfair competition claim involving common-law copyrights.[7]

Unable to challenge that legal principle it established, CBS is left to argue that the lower courts here made a factual mistake in finding that the unfair competition claim was based on the piracy of the common-law copyright in the Compilation. Rather, CBS argues that, because the Compilation was created from the raw material of clips from six copyrighted Chaplin films, the unfair competition claim was really based on its use of material protected by the federal copyright statute. That claim, repeated throughout CBS' petition (Pet. 3, 8, 9, 12, 18, 20), is the cornerstone of its position. All of CBS' other arguments are based on that claim.

But, as found below, CBS did not merely take clips from individual copyrighted films. It took the entire Compilation. The District Court found that the Compilation is "a separate,

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6 *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964); *Compco Corp.* v. *Day-Brite Lighting, Inc.*, 376 U.S. 234 (1964).

7 The court there declared:

> It is equally clear that the right of an author or proprietor of an unpublished work to common law protection and the application of state law of unfair competition in that field remains unaffected by these decisions [*Sears* and *Compco*] or the principles set forth in these opinions (42 Misc. 2d at 726, 248 N.Y.S.2d at 812).

individual creative expression" apart from the copyrighted clips (Pet. App. 43). Similarly, the Second Circuit found that the Compilation is "an original creative work, distinct from the films on which it draws" (Pet. App. 16). The Compilation was created by an award-winning producer (Bert Schneider) and an award-winning director (Peter Bogdanovich), with Chaplin's assistance. Their creative talents and expertise, in selecting, planning, sequencing and timing the individual excerpts, combined to produce a 13-minute Compilation of recognized artistic merit and distinctive value, independent of the clips from which it was fashioned.[8] Because of this, as the Second Circuit expressly noted, "plaintiffs, as owners of the Compilation, would have had a viable claim for unfair competition even if they did not hold copyrights in the films" (Pet. App. 22).

CBS itself recognized the independent artistic merit of the Compilation. To the CBS producers, it was far more than the mere "cutting and pasting" job which CBS now claims (Pet., p.6, n.6). Thus, rather than doing their own selection, editing, timing and artistic arrangement of clips, they used the entire 13-minute Compilation virtually intact. It was the centerpiece of the CBS program, constituting almost 40% of the broadcast.[9] The unique value of the Compilation is also shown by the

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8 Thus, the trial judge, in describing the Compilation, stated:

> . . . I can see a certain artistry to the manner in which the clips were put together. They were put together well. They flowed well. They made, at least in my judgment, for an entertaining presentation. They weren't just put up on the screen. They flowed like—if I may suggest it—a symphony. They really did.

(Tr. 794). [References to "Tr." are to pages of the trial transcript.] And the Compilation was listed among Bogdanovich's cinematic achievements in a biographical preface to a book of his writings on cinema (Tr. 1601-02).

9 It is thus a clear distortion of the record for CBS to state (Pet. 8) that it "gained access to the federally copyrighted Chaplin films" from NBC and that its commercial immorality lay in deceiving NBC "into releasing the Chaplin films." The record is clear that *NBC did not have the Chaplin films*. All NBC had was the unpublished Compilation—and that is what CBS obtained and used virtually intact.

lengths to which CBS went in order to obtain a copy, including misrepresentations to NBC. If CBS had merely wanted to use only isolated clips, it could have obtained them by renting Chaplin's feature films or by purchasing videocassettes of those motion pictures. Instead, CBS purloined the entire Compilation.

In any event, CBS' present claim that it used only individual copyrighted clips and not the Compilation is a factual issue rejected by the jury, the trial judge, the post-trial judge, and the Second Circuit. This Court does not sit to review such factual questions—even when they have not been so vigorously argued and so consistently rejected (*See* p. 9 *infra*).

The Second Circuit concluded that "the act of taking the Compilation, as an entity apart from the films, defines a distinct offense, caused distinct damage, and was the basis of the jury's finding of liability for unfair competition" (Pet. App. 21). The Second Circuit added:

> The commercial effectiveness of CBS's retrospective and the efficiency with which it was produced and shown were undoubtedly enhanced by the use of the plaintiffs' artistry in fashioning the Compilation from the raw material of the films. Moreover, CBS's conduct in obtaining the Compilation from NBC was commercially wrongful in a more serious way than use of film excerpts would have been. A decision to use isolated film clips to memorialize Chaplin's life could perhaps have been viewed as an act done in the good faith belief that such use was fair; but the additional decision not only to use the film clips, but to use them in a distinct and original form whose commercial potential, as CBS knew, reflected someone else's effort and creativity, precludes any thought of good faith. Under the circumstances, we think that the misappropriation is what renders unfair CBS's competition with "The Gentleman Tramp." *Indeed, the plaintiffs, as owners of the Compilation, would have had a viable claim for unfair competition even if they did not hold copyrights in the films.* (Pet. App. 21-22; emphasis added.)

Similarly, Judge Lasker held:

> [A] substantial element in CBS' misconduct was the taking of virtually the entire Compilation. . . . [T]he Compilation itself was protected only by *state* law, and CBS does not contend that the state law of common law copyright somehow preempts the state law of unfair competition. Given the facts of this case, it is reasonable to conclude that the finding of unfair competition was based primarily on the use of the Compilation . . . . (Pet. App. 50).[10]

Accordingly, the petition should be denied under several of this Court's well-established policies in dealing with certiorari petitions:

(1) As shown above, the opinion below rests on a clearly correct factual determination as to the basis for the state-law unfair competition verdict. In order to reach the constitutional question of federal preemption urged by CBS, this Court would have to reverse the factual determination that the state-law unfair competition verdict was based on the piracy of the Compilation as an independent artistic work. The Second Circuit's opinion makes it clear that this conclusion was one of New York State law, as applied to the facts of this case (Pet. App. 19). But this Court does not sit to review questions of

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10 In a like vein, Judge Ward charged the jury in a portion of his instructions immediately following the passage selectively quoted by CBS (Pet. 18-19):

> [T]he effort to profit from the labor, skill, expenditures, name and reputation of others constitutes unfair competition. The plaintiffs claim that they expended considerable labor, skill and money in the preparation of both the Compilation and "The Gentleman Tramp." They claim that *CBS appropriated their labor and skill by using the Compilation* without permission in the production of its obituary program, "Chaplin." (Emphasis added.)

fact[11] or state law.[12]

(2) Since the Second Circuit held that this case did not raise an issue of preemption, it specifically declined to consider the merits of the constitutional preemption question (Pet. App. 22, n.19). CBS' request for review of that question by this Court is inappropriate, because this Court does not ordinarily address for the first time issues which the Courts of Appeals have not even addressed.[13]

(3) Finally, this Court does not normally reach out to decide constitutional issues, such as preemption, when the decision below rests on independent nonconstitutional state and factual grounds.[14]

II

THE DECISION BELOW DOES NOT CONFLICT WITH ANY DECISION OF THIS OR ANY OTHER COURT

There is no basis for CBS' suggestion (Pet. 20-25) that the opinion below somehow conflicts with the rationale of other preemption precedents.

As the Second Circuit correctly ruled, the preemption doctrine is not even reached here because CBS misappropriated a common-law copyright preserved for state protection by the 1909 Copyright Act.

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11 *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 275 (1949); *Berenyi* v. *District Director, Immigration and Naturalization Service*, 385 U.S. 630, 635 (1967) (the Supreme Court "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error").

12 *Ragan v. Merchants Transfer Co.*, 337 U.S. 530, 534 (1949) ("We ordinarily accept the determination of local law by the Court of Appeals . . . and we will not disturb it here").

13 *J. Truett Payne Co.* v. *Chrysler Motors Corp.*, 451 U.S. 557, 568 (1981); *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955).

14 *United States* v. *Clark*, 445 U.S. 23, 27 (1980); *Wood* v. *Strickland*, 420 U.S. 308, 314 (1975).

But, even if the preemption doctrine were applicable, there would be no preemption here. First, there is no conflict between federal and state policies—the *sine qua non* of federal preemption.[15] On the contrary, as Judge Lasker pointed out, "here the law of unfair competition serves to compliment rather than conflict with, federal law" (Pet. App. 50). Second, there can be no preemption where, as here, the state and federal causes of action are "dissimilar" (Pet. App. 49).[16] The federal copyright statute protects copyrighted works against mere copying, whereas New York's unfair competition law bans any form of commercial immorality (Pet. App. 49).[17] The

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15 As this Court said in *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470, 479 (1974):

> The only limitation on the States is that in regulating the area of patents and copyrights they do not conflict with the operation of the laws in this area passed by Congress . . . .

See also Goldstein v. *California*, 412 U.S. 546, 561 (1973); *Aronson* v. *Quick Point Pencil Co.*, 440 U.S. 257, 262 (1979); *Zacchini* v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 577 (1977). Accordingly, even after *Sears-Compco*, *supra*, absent a clash between federal and state law, unfair competition remains viable "in a wide variety of situations to insure that 'one may not appropriate the results of the skill, expenditures and labors of a competitor.' " *Flexitized, Inc.* v. *National Flexitized Corp.*, 335 F.2d 774, 781 (2d Cir. 1964), *cert. denied*, 380 U.S. 913 (1965).

16 1 *Nimmer on Copyright* § 1.01[B] at 1-11 (1980).

17 *Metropolitan Opera Association* v. *Wagner-Nichols Recorder Corp.*, 199 Mis. 786, 796, 101 N.Y.S.2d 483, 492 (Sup. Ct., N.Y. Co. 1950), *aff'd*, 279 A.D. 632, 107 N.Y.S.2d 795 (1st Dept. 1951). *See International News Service* v. *Associated Press*, 248 U.S. 215 (1918). CBS' present suggestion (Pet. 20-25) that *Wagner-Nichols* and *INS* are no longer good law in light of *Sears-Compco* is contradicted by CBS' own post-trial brief which stated (pp. 80-81): "The misappropriation theory of the *Wagner-Nichols* unfair competition claim falls within that established realm of claims which are not preempted and harkens back to the seminal [*INS*] decision." That view of the law, which is correct, negates CBS' present suggestion of preemption, even if this case did not involve a common-law copyright. *See Truck Equipment Service Co.* v. *Fruehauf Corp.*, 536 F.2d 1210, 1220 (8th Cir.), *cert. denied*, 429 U.S. 861 (1976); *Flexitized, Inc.* v. *National Flexitized Corp.*, 335

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federal copyright statute was surely not intended to wipe out New York State's policies as to "the maintenance of standards of commercial ethics." *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470, 481-82 (1973).

Finally, the precedents cited by CBS (Pet. 22-23) do not conflict with the opinion below. None involved unfair competition claims based on the piracy of common-law copyrights preserved for state protection by the 1909 Copyright Act. Instead, the cases cited by CBS involved either attempts to protect intellectual property that failed to meet the rudimentary requirements for federal protection[18] or state claims based on the mere copying of works that, unlike the Compliation, were already protected by the federal copyright statute.[19]

(footnote continued)

F.2d 774, 781 (2d Cir. 1964), *cert. denied*, 380 U.S. 913 (1965); *Leonard Storch Enterprises, Inc.* v. *Mergenthaler Linotype Co.*, [1979] Copyright L. Rep. (CCH) ¶ 25,092 at 15,525-27 (E.D.N.Y. 1979); Brown, *Unification: A Cheerful Requiem for Common Law Copyright*, 24 U.C.L.A. L. Rev. 1070, 1106 (1977) (even after passage of the new Copyright Act, "state common and statutory law of unfair competition flourishes").

18 *Durham Industries, Inc.* v. *Tomy Corp.*, 630 F.2d 905 (2d Cir. 1980) (copying of material uncopyrightable for lack of requisite originality); *Puddu* v. *Buonamici Statuary, Inc.*, 450 F.2d 401 (2d Cir. 1971) (copying of material published without required copyright notice); *Suid* v. *Newsweek Magazine*, 503 F. Supp. 146 (D. D.C. 1980) (copying of historical facts excluded from copyright protection); *Synercon Technology, Inc.* v. *University Computing Co.*, 474 F. Supp. 37 (N.D. Tex. 1979) (copying of uncopyrightable embodiments of ideas); *Triangle Publications, Inc.* v. *Sports Eye, Inc.*, 415 F. Supp. 682 (E.D. Pa. 1976) (use of uncopyrightable facts contained in plaintiff's publication).

19 *Riback Enterprises, Inc.* v. *Denham*, 452 F.2d 845 (2d Cir. 1971) (copying format of plaintiff's copyrighted greeting cards); *Cable Vision, Inc.* v. *KUTV, Inc.*, 335 F.2d 348 (9th Cir. 1964), *cert. denied*, 379 U.S. 989 (1965) (reception and broadcast of copyrighted television programs); *Mitchell* v. *Penton/Industrial Publishing Co.*, 486 F. Supp. 22 (N.D. Ohio 1979) (copying from copyrighted book); *Orth-O-Vision, Inc.* v. *Home Box Office*, 474 F. Supp. 672 (S.D.N.Y. 1979) (public performance of copyrighted films).

III

THIS CASE, WHICH INVOLVES A SUPERSEDED STATUTE AND NOVEL FACTS, DOES NOT RAISE AN ISSUE OF GENERAL IMPORTANCE OR QUESTIONS LIKELY TO RECUR

Certiorari is also inappropriate because this case does not raise issues of general or lasting importance. Indeed, the case is an historical oddity because of a subsequent change in law.

Six days after CBS committed the tortious acts at issue, the Copyright Act of 1909 was superseded by the Copyright Revision Act of 1976. Perhaps the most significant change effected by the new statute is the abolition of common-law copyright protection under state law (17 U.S.C. § 301).[20] Thus, since January 1, 1978, the effective date of the new law, there has no longer been any distinction between unpublished and published works; both have been covered only by federal copyright for the past 4 1/2 years.

But the claims in this case, which arose prior to January 1, 1978, are governed by the 1909 Act. Section 2 of that Act preserved common-law copyrights. Accordingly, the Second Circuit correctly held that plaintiffs' claim of unfair competition—based on piracy of a common-law copyright—was not preempted.

The 1909 Copyright Act and the legal rationale for the opinion below cannot apply to any cause of action which arose on or after January 1, 1978 (even if the work in question was created before that date).[21] And all statutes of limitations on hypothetical unfair competition claims arising before then have

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20 Brown, *Unification: A Cheerful Requiem for Common Law Copyright*, 24 U.C.L.A. L. Rev. 1070, 1089-1105 (1977).

21 *Strout Realty, Inc.* v. *Country 22 Real Estate Corp.*, 493 F. Supp. 997 (W.D. Mo. 1980); *Bromhall* v. *Rorvik*, 478 F. Supp 361 (E.D. Pa. 1979).

either expired by now or will soon expire.[22] In view of the significant change in the copyright law, it is thus virtually impossible that there can ever be another case presenting circumstances similar to this one—namely, an unfair competition claim involving theft of a common-law copyright.

Thus, the issues raised by CBS have virtually no general importance or lasting significance.[23] They are of interest, if at all, only to scholars of copyright lore. But "this Court does not sit to satisfy a scholarly interest" or to review issues of "isolated significance." *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74, 76-77 (1955). Nor does this Court grant certiorari when the applicable statute "has been repealed and the question is therefore not of public importance." *District of Columbia* v. *Sweeney*, 310 U.S. 631 (1940).

In short, this is a *sui generis* case, under a statute repealed more than four years ago. The issues have been reviewed by two separate district court judges and a Second Circuit panel, whose decision rests on factual and state law grounds. Further review by this Court is clearly unwarranted.

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22 *See, e.g.*, Cal. Bus & Prof. Code § 17208 (West Supp. 1982) (4 years); Ill. Ann. Stat. ch. 83, § 15 (Smith-Hurd Supp. Pamph. 1981-1982) (5 years); N.Y. C.P.L.R. § 214 (McKinney Supp. 1981-1982) (3 years).

23 Indeed, CBS itself recognizes "the limited future of the 1909 Copyright Act", which governs this entire case (Pet. 23).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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